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**PATENT
Expedited Procedure
After Final Response
Under 37 CFR 1.116**

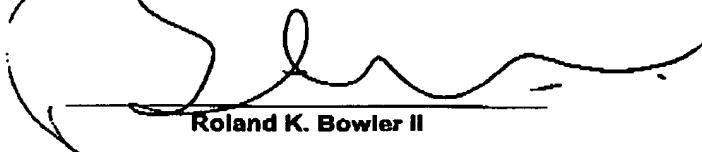
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Certificate of Facsimile Under 37 CFR 1.8

I hereby certify that this correspondence is being transmitted via facsimile to 703-872-9306 on 11 MAY 2004 addressed to: COMMISSIONER FOR PATENTS, ALEXANDRIA, VA 22313.



Roland K. Bowler II

Applicant:	KFOURY ET AL.)	
Appl. No.	09/941,521)	Examiner J. Chiang
Confirm. No.	7363)	Art Unit 2642
Filed:	29 August 2001)	Atty. Docket No. CS10289
Title:	"Electronic Device With Rotatable Keypad And Display"		

**TRANSMITTAL FOR PETITION
UNDER 37 CFR 1.181**

Commissioner for Patents
Alexandria, Virginia 22313

KFOURY ET AL.
"Electronic Device With Rotatable
Keypad And Display"
Atty. Docket No. CS10289

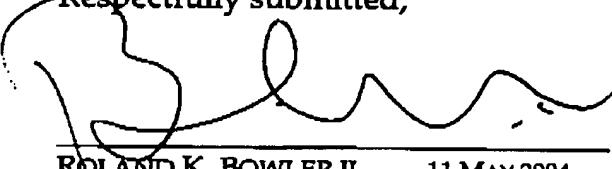
Petition Under 37 CFR 1.181
Appl. No. 09/941,521
Examiner J. Chiang
Art Unit 2642

Sir:

The following is enclosed in response to the final Office Action 3
March 2004:

[X] Petition under 37 CFR 1.181 (6 pages);
[X] Fee Calculation Sheet (Duplicate) including
authorization for the Commissioner of Patents & Trademarks to any fees
required under 37 CFR 1.16 & 1.17 from, and to credit any excess fees paid to,
Motorola Inc., Deposit Account No. 50-2117, Customer No. 20280 in connection
with the filing of the referenced materials.

Respectfully submitted,



ROLAND K. BOWLER II
REG. NO. 33,477

11 MAY 2004

TELEPHONE NO. (847) 523-3978
FACSIMILE NO. (847) 523-2350

MOTOROLA, INC.
INTELLECTUAL PROPERTY DEPT. (RKB)
600 NORTH U.S. HIGHWAY 45, AN475
LIBERTYVILLE, ILLINOIS 60048

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MAY 11 2004

FEE TRANSMITTAL		Complete if Known	
Patent fees are subject to annual revision TOTAL AMOUNT OF PAYMENT (\\$) 140.00		Application Number	09/941,521
		Filing Date	29 August 2001
		First Named Inventor	KFOURY
		Examiner Name	J. Chiang
		Group Art Unit	2642
		Attorney Docket No.	CS10298

METHOD OF PAYMENT				FEE CALCULATION (continued)																																																																																																																																																																																																																																																																																											
1. <input checked="" type="checkbox"/> The Commissioner is hereby authorized to charge indicated fees and credit any overpayment to: Deposit Account Number 502117 Deposit Account Name Motorola, Inc.				3. ADDITIONAL FEES <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr> <th style="width: 15%;">Large Entity Fee (\$)</th> <th style="width: 15%;">Small Entity Fee (\$)</th> <th style="width: 15%;">Fee Description</th> <th style="width: 15%;"></th> </tr> </thead> <tbody> <tr><td>1051</td><td>130</td><td>2051</td><td>65</td><td>Surcharge - late filing fee or cash</td><td></td><td></td><td></td></tr> <tr><td>1052</td><td>50</td><td>2052</td><td>25</td><td>Surcharge - late Provisional filing</td><td></td><td></td><td></td></tr> <tr><td>1053</td><td>190</td><td>1053</td><td>130</td><td>Non-English specification</td><td></td><td></td><td></td></tr> <tr><td>1812</td><td>2520</td><td>1812</td><td>2520</td><td>For filing a request for ex parte Reexamination</td><td></td><td></td><td></td></tr> <tr><td>1804</td><td>920*</td><td>1804</td><td>920*</td><td>Requesting publication of SIR prior to Examiner action</td><td></td><td></td><td></td></tr> <tr><td>1805</td><td>1840*</td><td>1805</td><td>1840*</td><td>Requesting publication of SIR after Examiner action</td><td></td><td></td><td></td></tr> <tr><td>1251</td><td>110</td><td>2251</td><td>55</td><td>Extension for reply within first month</td><td></td><td></td><td></td></tr> <tr><td>1252</td><td>410</td><td>2252</td><td>205</td><td>Extension for reply within second month</td><td></td><td></td><td></td></tr> <tr><td>1253</td><td>930</td><td>2253</td><td>465</td><td>Extension for reply within third month</td><td></td><td></td><td></td></tr> <tr><td>1254</td><td>1450</td><td>2254</td><td>725</td><td>Extension for reply within fourth month</td><td></td><td></td><td></td></tr> <tr><td>1255</td><td>1970</td><td>2255</td><td>985</td><td>Extension for reply within fifth month</td><td></td><td></td><td></td></tr> <tr><td>1401</td><td>320</td><td>2401</td><td>160</td><td>Notice of Appeal</td><td></td><td></td><td></td></tr> <tr><td>1402</td><td>320</td><td>2402</td><td>160</td><td>Filing a brief in support of an appeal</td><td></td><td></td><td></td></tr> <tr><td>1403</td><td>280</td><td>2403</td><td>140</td><td>Request for oral hearing</td><td></td><td></td><td></td></tr> <tr><td>1451</td><td>1510</td><td>1451</td><td>1510</td><td>Petition to institute a public use proceeding</td><td></td><td></td><td></td></tr> <tr><td>1452</td><td>110</td><td>2452</td><td>55</td><td>Petition to revive - unavoidable</td><td></td><td></td><td></td></tr> <tr><td>1453</td><td>1900</td><td>2453</td><td>650</td><td>Petition to revive - unintentional</td><td></td><td></td><td></td></tr> <tr><td>1501</td><td>1900</td><td>2501</td><td>650</td><td>Utility issue fee (or reissue)</td><td></td><td></td><td></td></tr> <tr><td>1502</td><td>470</td><td>2502</td><td>235</td><td>Design issue fee</td><td></td><td></td><td></td></tr> <tr><td>1503</td><td>630</td><td>2503</td><td>315</td><td>Plant issue fee</td><td></td><td></td><td></td></tr> <tr><td>1460</td><td>130</td><td>1460</td><td>130</td><td>Petitions to the Commissioner</td><td></td><td></td><td></td></tr> <tr><td>1807</td><td>50</td><td>1807</td><td>50</td><td>Processing fee under 37 CFR 1.17(q)</td><td></td><td></td><td></td></tr> <tr><td>1806</td><td>180</td><td>1806</td><td>180</td><td>Submission of IDS</td><td></td><td></td><td></td></tr> <tr><td>8021</td><td>40</td><td>8021</td><td>40</td><td>Recording each patent assignment per property (times number of assignees)</td><td></td><td></td><td></td></tr> <tr><td>1809</td><td>750</td><td>2809</td><td>375</td><td>Filing a submission after final rejection (37 CFR § 1.129(a))</td><td></td><td></td><td></td></tr> <tr><td>1810</td><td>750</td><td>2810</td><td>375</td><td>For each additional invention to be examined (37 CFR § 1.129(b))</td><td></td><td></td><td></td></tr> <tr><td>1801</td><td>750</td><td>2801</td><td>375</td><td>Request for Continued Examination (RCE)</td><td></td><td></td><td></td></tr> <tr><td>1802</td><td>900</td><td>1802</td><td>900</td><td>Request for expedited examination of a design application</td><td></td><td></td><td></td></tr> <tr><td colspan="4">Other fee (specify) <u>Petition under 37 CFR 1.181</u></td><td></td><td></td><td></td><td>140.00</td></tr> <tr> <td colspan="4" style="text-align: right; padding: 5px;">SUBTOTAL (1) (\\$) 0.00</td> <td colspan="4" style="text-align: right; padding: 5px;">* Reduced by Basic Filing Fee paid SUBTOTAL (3) <u>(\\$) 140.00</u></td> </tr> <tr> <td colspan="4" style="text-align: center; padding: 5px;">**OR NUMBER PREVIOUSLY PAID, IF GREATER THAN STANDARD ALLOWANCE. *For Reissues, see above</td> <td colspan="4" style="text-align: center; padding: 5px;">Complete if applicable</td> </tr> <tr> <td colspan="4" style="text-align: center; padding: 5px;">SUBMITTED BY</td> <td colspan="4" style="text-align: center; padding: 5px;">Registration No. 33,477</td> </tr> <tr> <td>Name (Print/Type)</td> <td colspan="3">Roland K Bowler II</td> <td>Telephone</td> <td colspan="3">847-523-3978</td> </tr> <tr> <td>Signature</td> <td colspan="3"></td> <td>Date</td> <td colspan="3">11 May 2004</td> </tr> </tbody> </table>				Large Entity Fee (\$)	Small Entity Fee (\$)	Fee Description						1051	130	2051	65	Surcharge - late filing fee or cash				1052	50	2052	25	Surcharge - late Provisional filing				1053	190	1053	130	Non-English specification				1812	2520	1812	2520	For filing a request for ex parte Reexamination				1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action				1805	1840*	1805	1840*	Requesting publication of SIR after Examiner action				1251	110	2251	55	Extension for reply within first month				1252	410	2252	205	Extension for reply within second month				1253	930	2253	465	Extension for reply within third month				1254	1450	2254	725	Extension for reply within fourth month				1255	1970	2255	985	Extension for reply within fifth month				1401	320	2401	160	Notice of Appeal				1402	320	2402	160	Filing a brief in support of an appeal				1403	280	2403	140	Request for oral hearing				1451	1510	1451	1510	Petition to institute a public use proceeding				1452	110	2452	55	Petition to revive - unavoidable				1453	1900	2453	650	Petition to revive - unintentional				1501	1900	2501	650	Utility issue fee (or reissue)				1502	470	2502	235	Design issue fee				1503	630	2503	315	Plant issue fee				1460	130	1460	130	Petitions to the Commissioner				1807	50	1807	50	Processing fee under 37 CFR 1.17(q)				1806	180	1806	180	Submission of IDS				8021	40	8021	40	Recording each patent assignment per property (times number of assignees)				1809	750	2809	375	Filing a submission after final rejection (37 CFR § 1.129(a))				1810	750	2810	375	For each additional invention to be examined (37 CFR § 1.129(b))				1801	750	2801	375	Request for Continued Examination (RCE)				1802	900	1802	900	Request for expedited examination of a design application				Other fee (specify) <u>Petition under 37 CFR 1.181</u>							140.00	SUBTOTAL (1) (\\$) 0.00				* Reduced by Basic Filing Fee paid SUBTOTAL (3) <u>(\\$) 140.00</u>				**OR NUMBER PREVIOUSLY PAID, IF GREATER THAN STANDARD ALLOWANCE. *For Reissues, see above				Complete if applicable				SUBMITTED BY				Registration No. 33,477				Name (Print/Type)	Roland K Bowler II			Telephone	847-523-3978			Signature				Date	11 May 2004		
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Applicant: KFOURY ET AL.)
10 Appl. No. 09/941,521) Examiner J. Chiang
Confirm. No. 7363) Art Unit 2642
Filed: 29 August 2001) Atty. Docket No. CS10289
15 Title: "Electronic Device With Rotatable Keypad And Display"

PETITION UNDER 37 C.F.R. § 1.181;
REQUEST FOR WITHDRAWAL OF FINAL
REJECTION & CONSIDERATION OF
AFFIDAVIT UNDER 37 CFR 1.131

Commissioner for Patents
Alexandria, Virginia 22313

25

Sir:

Prosecution Summary

30 **Examiner's Non-Final Office Action**

35 A first, non-final Office Action was mailed in the subject patent application on 2 February 2004. Claims 1-8, 10 & 14-25 were rejected under 35 USC 102(e) for anticipation by U.S. Patent No. 6,593,914 (Nuovo). Claim 9 was rejected under 35 USC 103(a) as being unpatentable over Nuovo in view of

KFOURY ET AL.
"Electronic Device With Rotatable
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U.S. Patent 6,349,221 (Wolf). Claims 11 and 12 were rejected under 37 CFR 103(a) as being unpatentable under U.S. Patent No. 4,267,409 (Baldoni).

Applicants' Submission Under 37 CFR 1.115

5

On 5 February 2004, Applicants filed a preliminary amendment under 37 CFR 1.115. Claims 26-28 were added. Applicants and their undersigned representative were unaware of the non-final Office action mailed on 2 February 2004 at the time the submission under 37 CFR 1.115 was prepared and filed in the Patent Office. Applicants' submission under 37 CFR 1.115 filed on 5 February 2004 did not address any of the issues raised in the Office action mailed on 2 February 2004

Examiner's Final Rejection

15

A final Office Action was mailed on 3 March 2004 in response to the submission under 37 CFR 1.115 filed on 5 February 2004. Claims 1-8, 10 & 14-28 were rejected under 35 USC 102(e) for anticipation by U.S. Patent No. 6,593,914 (Nuovo). Claim 9 was rejected under 35 USC 103(a) as being unpatentable over Nuovo in view of U.S. Patent 6,349,221 (Wolf). Claims 11 and 12 were rejected under 37 CFR 103(a) as being unpatentable under U.S. Patent No. 4,267,409 (Baldoni). The Examiner asserted that the finality of the rejection was necessitated by the amendment.

25

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Applicant's After Final Response

On 8 April 2004, Applicant filed a response to the final Office Action under 37 CFR 1.116 including an affidavit under 37 CFR 1.131 swearing back of U.S. Patent No. 6,593,914 (Nuovo).

5

Examiner's Advisory Action

On 22 April 2004, the Examiner mailed an Advisory Action refusing entry of the "remarks" in Applicants after final response of 4 April 2004. In a subsequent telephone exchange with Applicants representative on or about 7 May 2004, the Examiner clarified that consideration of the Affidavit under 37 CFR 1.131 was refused on the basis that it was submitted untimely.

10

15 Applicant's Notice & Appeal

On 28 April 2004, the Applicants filed a Notice of Appeal and supporting brief.

In a subsequent telephone exchange with Applicants representative on or about 7 May 2004, the Examiner clarified that consideration of the Affidavit under 37 CFR 1.131 was refused on the basis that it was submitted untimely.

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Notice of Impropriety of Final Rejection &
Demand for Withdrawal of Final of Rejection

Impropriety of Final Rejection

5

The finality of the Office Action mailed on 3 March 2004 is improper, since Applicants did not respond to the previous non-final Office Action mailed on 2 February 2004.

Under the Commissioner's examination guidelines, MPEP 714(e),
10 amendments received by the Office after the mail date of the first office action are considered non-responsive to the Office action. MPEP 714(e) states that the

15 ... Office will not mail a new Office action [in response to an amendment received after the mailing of a first Office action], but simply advise the applicant that the amendment is nonresponsive to the first Office action and that a responsive reply must be timely filed to avoid abandonment. See MPEP 714.03

Applicants' Submission under 37 CFR 1.115 adding new Claims
20 26-28 was not responsive to the non-final Office Action mailed on 2 February 2004 as required under 37 CFR 1.111 for among, other reasons, failure to request reconsideration and failure to reply to every ground for objection a rejection in the Office Action. As noted, Applicants 37 CFR 1.115 submission merely added new claims. Moreover, at the time the 37 CFR 1.115 submission
25 was filed, Applicants were not yet on notice that the application was the subject of an action on the merits.

Therefore in response to receiving Applicants' submission under 37 CFR 1.115, the Examiner should have refused entry and consideration of the amendment. The finality of the rejection in the Office action of 3 March 2004,

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in response to the submission under 37 CFR 1.115, was therefore improper and must be withdrawn.

Request for Consideration of Affidavit Under 37 CFR 1.131

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The Examiner contends that Applicants affidavit was untimely for its submission after the rejection was made final. As noted above, however, the finality of the rejection is believed to have been improper, and withdrawal of its finality will render moot the issue of the timeliness of the affidavit.

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The affidavit under 37 CFR 1.131 was nevertheless submitted timely whether or not the finality of the rejection is ultimately withdrawn. The guidelines for seasonal presentation of an affidavit under 37 CFR 1.131 set forth in MPEP 715.09 are the circumstances under which an affidavit is considered to be timely. The guidelines however do not indicate that a non-compliant affidavit is untimely.

15

Applicants' affidavit under 37 CFR 1.131 was submitted with Applicants first reply to an office action on the merits. Under these circumstances, Applicants response and affidavit should be considered timely and given consideration. Alternatively, under the guidelines at MPEP 715.09, a affidavit is considered seasonable if it submitted

20

... (1) with a first reply after final rejection for the purpose of overcoming a new ground of rejection or requirement made in the final rejection....

25

In the instant application, the Examiner contends at paragraph 6 of the final Office action mailed on 3 March 2004 that "... Applicant's amendment [submission under 37 CFR 1.115] necessitated the new ground(s)

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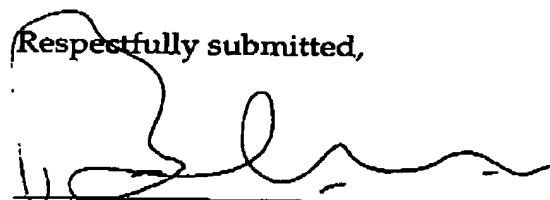
for rejection presented in this office action." On this basis, pursuant to MPEP 715.09, Applicant's affidavit under 37 CFR 1.131 was timely since it was presented in response to a new ground of rejection or requirement made in the final Office action.

5

Prayer for Relief

In view of the discussion above, kindly remand the instant application to the Examiner with instructions to withdraw the finality of the rejection and/or at least enter and consider Applicants' response under 37 CFR 1.116 including the Affidavit under 37 CFR 1.131 filed on 8 April 2004.

Respectfully submitted,


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